

**REMARKS**

Claims 1-23 and 25 are pending. Claims 1-3, 6-9, 12, 14, 16, 17, 20, and 22 are amended and claim 24 are canceled with this response. Reconsideration of the application is respectfully requested based on the following remarks.

**I. REJECTION OF CLAIMS 1-13 UNDER 35 U.S.C. § 101**

Claims 1-13 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Withdrawal of the rejection is respectfully requested for at least the following reasons.

Claim 1 has been amended so that the claim comprises of statutory subject matter. More specifically, a host computer system that is operable to store and execute the layered device driver system has been added.

In light of these current amendments, withdrawal of the rejection is respectfully requested for claim 1 and depending claims thereof.

**II. REJECTION OF CLAIMS 1-13 UNDER 35 U.S.C. § 103(a)**

Claims 1-4, 8, 9, 12, and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,032,227 B2 (Wilkinson) in view of U.S. Patent No. 5,684,962 A (Black). Claim 5 was rejected under 35. U.S.C. § 103(a) as being unpatentable over Wilkinson in view of Black, as applied to claim 1, and in view of U.S. Patent No. 5,867,688 A (Simmon). Claims 10 and 11 were rejected under 35. U.S.C. § 103(a) as being unpatentable over Wilkinson in view of Black, as applied to claim 1, and in view of U.S. Patent No. 6,882,654 B1 (Nelson). Claims 6 and 7 were rejected under 35. U.S.C. § 103(a) as being unpatentable over Wilkinson in view of Black, as applied to claim 1, in view of U.S. Simmon and further in view of U.S. Patent No. 6,892,261 B2 (Ohno). Withdrawal of the rejection is respectfully requested for at least the following reasons.

***i. Wilkinson does not teach a network device independent module, as recited in claim 1 of applicant.***

Claim 1 has been amended to more clearly describe the claimed invention. Claim 1 provides a layered network device driver system comprising a computing system with an operating system, an operating system dependent module, an operating system independent module, a network device independent module, a network device dependent module, and a network device. Claim 1 further describes a relational four layer architecture hierarchy within the layered network device driver system. As will be further appreciated from the following discussion, ***Wilkinson does not teach a network device independent module***, as recited in claim 1.

The Office Action dated September 19, 2008 asserts a media independent module is taught by Wilkinson with a reference to an abstraction layer 14 that enables the use of an operating system 16 and the usage of third party components like device drivers 18. (See, e.g., Column 5, lines 60-65). Wilkinson teaches a device driver 18 where the device driver is dependent on the device and communicates with the operating system in a device dependent and operating system dependent manner (abstract layer as taught by Wilkinson). (See, e.g., figure 1). Wilkinson does not teach of a network device independent module that exists between the network device dependent module (device driver 18) and a operating system independent module (abstraction layer 14). Additionally, amended claim 1 provides for a network device independent module that selectively appends transmit or the receive data with optional parameters, error checking on transmit and received data by the operating system independent module, along with other hierarchical relational and functionality not taught by Wilkinson and the other cited references. Therefore, Wilkinson fails to teach the above feature of claim 1, of applicant.

Therefore independent claim 1 along with respective depending claims 2 -13 are believed non-obvious over Wilkinson and thus allowable. Accordingly withdrawal of the rejection is respectfully requested.

**III. REJECTION OF CLAIMS 20-25 UNDER 35 U.S.C. § 103(a)**

Claims 20-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkinson in view of Black, as applied to claim 1, in view of U.S. Simon and further in view of U.S. Patent No. 6,892,261 B2 (Ohno). Withdrawal of the rejection is respectfully requested for at least the following reasons.

The Office Action dated September 19, 2008 asserts claim 20 was rejected because it was an apparatus claim of claims 1, 3, and 7. Considering claim 1 and dependent claims are believed to be allowable over the cited references, this implies claim 20 must be considered allowable as well.

Accordingly, for at least the above stated reasons, withdrawal of the rejection of claim 20 and subsequent dependant claims is respectfully requested.

**IV. REJECTION OF CLAIMS 14-19 UNDER 35 U.S.C. § 103(a)**

Claims 14-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Simon in view of Nelson and further in view of U.S. Patent No. 6,260,140 B1 (McKeeth). Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Simon in view of Nelson, in view of McKeeth, and further in view of U.S. Patent Publication No. 2005/0141424 A1 (Lim). Withdrawal of the rejection is respectfully requested for at least the following reasons.

Claim 14 has been amended to include further limitations such as ***appending the array based data structure, by filling in a null pointer with an optional array that consists of optional parameters and size, by a network device independent module***. Simon in view Nelson and further in view of McKeeth fail to teach of a network device independent module and a module that performs with such functionality as recited in claim 14. Therefore claim 14 is considered non-obvious with respect to the cited references.

Accordingly, for at least the above stated reasons, withdrawal of the rejection of claim 14 and subsequent dependant claims is respectfully requested.

**V. CONCLUSION**

For at least the above reasons, the claims currently under consideration are believed to be in condition for allowance.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, AMDP755US.

Respectfully submitted,  
ESCHWEILER & ASSOCIATES, LLC

/Thomas G. Eschweiler/  
Thomas G. Eschweiler  
Reg. No. 36,981

National City Bank Building  
629 Euclid Avenue, Suite 1000  
Cleveland, Ohio 44114  
(216) 502-0600